



September 1, 2017

Honorable Stacy L. Ruble
Secretary
Postal Regulatory Commission
901 New York Avenue, NW, Suite 200
Washington, DC 20268-0001

Dear Mr. Ruble:

Pursuant to 39 U.S.C. § 407(d)(2), the U.S. Postal Service ("Postal Service") is providing the Commission with a copy of its contract titled "KPG Agreement on Use of Intellectual Property" ("Agreement").¹

The non-public, unredacted version of the agreement is being filed under seal, and is marked "Confidential" and "Non-Public," because the document contains information considered confidential and commercially sensitive by the parties to the agreement. The Postal Service considers certain portions of the document to be protected by 39 U.S.C. § 410(c)(2) and Exemption 4 of the Freedom of Information Act (FOIA).

Consequently, we have attached an application for non-public treatment of this document under 39 C.F.R. § 3007.21. In addition, we respectfully request that the Commission coordinate with the Postal Service in the event that the document becomes subject to a FOIA request, so that we can engage in appropriate consultations with the affected postal operators.

Please feel free to contact me if additional information would be helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "James M. Mecone".

James. M. Mecone
Attorney, Global Business &
Service Development

Enclosures

¹ The Postal Service is filing the Agreement after its effective date because it initially concluded that the Agreement fell outside the scope of the 39 U.S.C. § 407(d) filing requirement. Upon further review and analysis, it was determined that it is appropriate to file the Agreement.

APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NONPUBLIC TREATMENT OF MATERIALS

In accordance with 39 C.F.R. § 3007.21, the United States Postal Service (“Postal Service”) applies for non-public treatment of the enclosed commercial agreement related to the improvement of international postal services, particularly express, packages and logistic services, among members of the Kahala Posts Group (“KPG”).¹ The Postal Service is transmitting this agreement to the Postal Regulatory Commission (“Commission”) in accordance with 39 U.S.C. § 407(d). A redacted version of this agreement is enclosed with this transmittal. The Postal Service furnishes the justification required for this application by 39 C.F.R. § 3007.21(c) below.

(1) The rationale for claiming that the materials are non-public, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);

Information of a commercial nature, which under good business practice would not be publicly disclosed, as well as third party business information, is not required to be disclosed to the public. 39 U.S.C. § 410(c)(2); 5 U.S.C. § 552(b)(4). The Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A).² Because the portions of materials filed non-publicly fall within the scope

¹ At the time of the execution of the Agreement, members of the KPG included the United States Postal Service, Australian Postal Corporation, China Post Group, Correos y Telégrafos SAE, Hongkong Post, Japan Post Co., Ltd., Korea Post, Groupe La Poste, Royal Mail Group, Ltd., and Thailand Post Co., Ltd., and the members have agreed to add Canada Post Corporation as a full member.

² The Commission has indicated that “likely commercial injury” should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

of information not required to be disclosed publicly, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

(2) Identification, including name, phone number, and e-mail address for any third party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;

In the case of an agreement such as the one transmitted here, the Postal Service believes that the postal operators that are parties to the agreement are the only third parties with a proprietary interest in the materials. The Postal Service identifies as an appropriate contact person Vincent Mougey, General Manager, KPG, Jubilee Center 9/F #905, 18 Fenwick Street, Wan Chai, Hong Kong, Hong Kong. Mr. Mougey's phone number is +852 2528 6716, and his email address is vincent.j.mougey@usps.gov. The Postal Service has already informed the member posts of KPG, in compliance with 39 C.F.R. § 3007.20(b), about the nature and scope of this filing and about the postal operator's ability to address any confidentiality concerns directly with the Commission.

(3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;

As required by 39 U.S.C. § 407(d), the Postal Service is transmitting an agreement with foreign postal operators, certain of which are agencies of a foreign government. The agreement includes information concerning commercially sensitive intellectual property and proprietary business practices. The Postal Service maintains that the redacted portions of the document should remain confidential.

(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;

If the information that the Postal Service determined to be protected from disclosure due to its commercially sensitive nature were to be disclosed publicly, there is a high likelihood that the Postal Service would suffer commercial harm. This information is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practices. Competitors, which might include foreign postal operators as well as integrators, could use the information concerning intellectual property described in connection with Factor (3) above to assess any possible comparative vulnerabilities and to focus sales and marketing efforts on those areas, to the detriment of the Postal Service and the foreign postal operators that signed the agreement. Additionally, foreign postal operators or other potential customers could use the information to their advantage in the development of their own products and services. The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the redacted material.

The agreement includes specific information concerning business practices related to intellectual property. All of this information is highly confidential in the business world. If this information were made public, the Postal Service's competitors, and the competitors of the other postal operators that signed the agreement, would have the advantage of being able to assess the terms and conditions related to the use of intellectual property by Kahala Post Group members. Competitors would be able to take advantage of the information when seeking to acquire or develop their own intellectual property. Information in the agreement also consists of sensitive commercial information of foreign postal operators that are members of KPG. Disclosure of such

information could be used by competitors of those postal operators to develop a benchmark for the development of a competitive alternative.

Finally, information about the structure of the organization and its activities is withheld on grounds that disclosure could provide insight by competing postal operators and integrators on the collective cost of maintaining a similar type of association and funding activities such as research related to intellectual property. Disclosure of such information would enable competitors to gain valuable intelligence to mimic a similar type of arrangement.

(5) At least one specific hypothetical, illustrative example of each alleged harm;

Harm: Public disclosure of information in the agreement, including information concerning KPG's intellectual property and strategic initiatives, would be used by the Postal Service's competitors, as well as competitors of the foreign postal operators that signed the agreement.

Hypothetical: A competing international delivery service obtains copies of the unredacted version of the agreement from the Postal Regulatory Commission's website. The competitor analyzes the agreement to assess the intellectual property and strategic initiatives of KPG, foreign postal operators, and the Postal Service. The competitor uses that information as a baseline to develop competitive alternatives.

Harm: Competitors would use knowledge of KPG's intellectual property and operational features to assess vulnerabilities and focus sales and marketing efforts to the detriment of the Postal Service and the other postal operators that signed the agreement.

Hypothetical: The information about KPG's intellectual property and operational features in the agreement is released to the public. Another delivery service's employee

monitors the filing of this information and passes the information along to its sales and marketing functions. The competitor then uses this information as a comparison point, advertising itself to potential customers as offering performance better than the Postal Service or another postal operator that signed the agreement.

Harm: Competitors could use the information in the agreement to create competing associations that mimic the structure, funding, and activities of the association.

Hypothetical: Information about the financing of the organization and its activities is released on the Commission's website. Through disclosure of the costs of funding the organization and its activities, competing postal operators or integrators can assess whether the expenses needed to create a competing organization or association would be worthwhile. If so, a competing postal operator or integrator would use the information in the agreement as a template to create a model for a competing association. Further, competitors could gain valuable intelligence to assess the costs borne by the KPG operators on the administration of the association and their efforts targeted at the markets which serve as the focus of KPG activities.

(6) The extent of protection from public disclosure deemed to be necessary;

The Postal Service maintains that the redacted portions of the materials filed non-publicly should be withheld from persons involved in competitive decision-making in the relevant markets for international expedited and parcels products (including postal operators and private sector integrators), as well as their consultants and attorneys. Additionally, the Postal Service believes that, except for foreign postal operators that already have access to this information, actual or potential customers of the Postal

Service for parcels and expedited services or similar products should not be provided access to the non-public materials.

(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof; and

The Commission's regulations provide, at this time, that non-public materials will lose non-public status ten years after the date of filing with the Commission, unless the Commission or its authorized representative enters an order extending the duration of that status. 39 C.F.R. § 3007.30.

(8) Any other factors or reasons relevant to support the application.

None.

Conclusion

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials.

MEMORANDUM OF UNDERSTANDING

KPG AGREEMENT ON USE OF INTELLECTUAL PROPERTY

Between

THE AUSTRALIAN POSTAL CORPORATION, CHINA POST GROUP, CORREOS Y TELÉGRAFOS SAE, HONGKONG POST, JAPAN POST CO., LTD., KOREA POST, GROUPE LA POSTE, ROYAL MAIL GROUP LTD., THAILAND POST CO., LTD., AND UNITED STATES POSTAL SERVICE ("MOU")

WHEREAS, the Australian Postal Corporation, China Post Group, Hongkong Post, Japan Post Co., Ltd., Korea Post, and the United States Postal Service (as further defined below at clause 1.3) have joined together as the Kahala Posts Group ("**KPG**") to improve postal express and package services in the Asia-Pacific area and other regions;

WHEREAS, KPG had a vision of the development of an enhanced EMS Product ("**Standard Service**") initially for the Founding Members in the Asia-Pacific region;

WHEREAS, the Founding Members have collectively funded the development of [REDACTED] that implement KPG's vision;

WHEREAS, the Founding Members have decided to [REDACTED]

WHEREAS, the Founding Members have decided to [REDACTED]

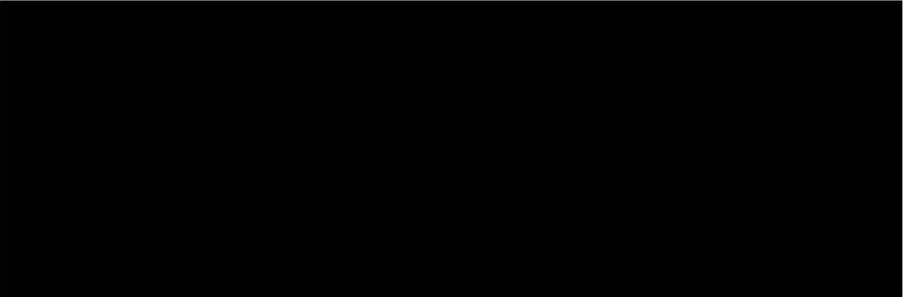

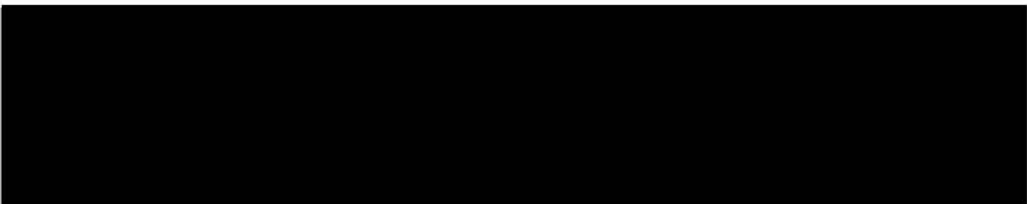
WHEREAS, Correos y Telégrafos SAE of Spain, Royal Mail Group Ltd of the United Kingdom, Groupe La Poste of France, and Thailand Post Co., Ltd. (as further defined below at clause 1.7) have joined with the Founding Members in KPG for the purpose of improving postal express, and package services; and

WHEREAS, the KPG Members, through their collaboration, seek to promote customer choice and improve service options for postal express and package services consistent with the laws that apply to them,

The undersigned KPG Members hereby agree as follows:

1. GENERAL DEFINITIONS

In this Agreement:

- 1.1. **Acquired Intellectual Property** means Pre-Existing Intellectual Property (defined below) that has been transferred to KPG members by means of a formal written transfer document
 - 1.1.1. 
 - 1.1.2. **Acquired Intellectual Property** includes all rights in the Intellectual Property in and relating to 
- 1.2. **"Effective Date"** means the date that this MOU begins to be effective, which is defined in clause 9.
- 1.3. **"Founding Member"** means the Australian Postal Corporation, China Post Group, Hongkong Post, Japan Post Co., Ltd., Korea Post and the United States Postal Service.
- 1.4. 
- 1.5. **"Intellectual Property"** means patents, patentable rights, copyright, design rights, utility models, trade marks (whether or not any of the above are registered), trade names, rights in inventions, rights in data, database rights, rights in know-how and confidential information, and all other intellectual and industrial property and similar or analogous rights existing under the laws of any country and all pending applications for and right to apply for or register the same (present, future and contingent, and including all renewals, extensions, revivals and all accrued rights of action);
- 1.6. **"KPG Intellectual Property"** means Acquired Intellectual Property and New Intellectual Property, as set out in Clause 4.1;

- 1.7. **"New Full Member(s)"** means a KPG Full Member, which is not a Founding Member. At this time the KPG New Full Members are Correos y Telégrafos SAE, Groupe La Poste, Royal Mail Group Ltd, and Thailand Post Co., Ltd..
- 1.8. **"KPG Associate Member"**, means an established member of KPG under the Associate Membership Scheme, specifically, a member who has taken the necessary steps to become a KPG Associate Member by the execution of the KPG Associate Members Agreement, and the [REDACTED]
- 1.9. **"KPG Full Member"**, means an established member of KPG, specifically, a member who has executed the appropriate agreements and taken the necessary steps to become a KPG Full Member by the execution of this MOU and the related agreements (i.e., the Strategic Services Agreement, the KPG Members Agreement, and the [REDACTED]). At this time the KPG Full Members are the parties to this MOU and are the Australian Postal Corporation, China Post Group, Correos y Telégrafos SAE, Hongkong Post, Japan Post Co., Ltd., Korea Post, Groupe La Poste, Royal Mail Group Ltd, Thailand Post Co., Ltd., and the United States Postal Service. In this MOU, KPG Full Members refers to both New Full Members and Founding Members.
- 1.10. **"KPG Member"**, means a member who has executed the appropriate KPG agreements associated with its membership level. In this MOU, KPG Members refers to KPG Full Members and KPG Associate Members.
- 1.11. [REDACTED]
- 1.12. **"New Intellectual Property"** means intellectual property that is [REDACTED]
- 1.12.1. [REDACTED]
- 1.12.2. [REDACTED]
- 1.12.3. [REDACTED]

1.12.4. [REDACTED]

1.13. [REDACTED]

1.14. **“Pre-Existing Intellectual Property”** means intellectual property

1.14.1. [REDACTED]

1.14.2. [REDACTED]

1.14.3. [REDACTED]

1.14.4. [REDACTED]

2. LEGAL STATUS OF THIS MEMORANDUM OF UNDERSTANDING

This MOU constitutes a binding commercial contract amongst and between each KPG Full Member who has executed this document below, and creates legal rights and obligations on the part of each signatory.

3. PURPOSE AND SCOPE

This MOU concerns Intellectual Property rights and the use of, for example, the KPG Intellectual Property and related matters.

3.1. The purpose of this MOU is to facilitate KPG's objective that all KPG members work to a goal of mutual benefit through association.

3.2. [REDACTED]

4. SPECIFICS OF AGREEMENT AS TO KPG INTELLECTUAL PROPERTY AND RIGHTS

4.1. [REDACTED]

[REDACTED]

4.1.1. [REDACTED]

4.1.2. [REDACTED]

4.1.3. [REDACTED]

4.1.4. [REDACTED]

4.2. [REDACTED]

4.2.1. [REDACTED]

4.2.2. [REDACTED]

4.3. [REDACTED]

5. RESTRICTIONS:

5.1. No KPG Full Member may:

5.1.1. [REDACTED]

5.1.2. [REDACTED]

5.1.3. [REDACTED]

5.1.4. [REDACTED]

5.1.5. [REDACTED]

6. [REDACTED]

[REDACTED]

7. TERMINATION

7.1. [REDACTED]

7.1.1. [REDACTED]

7.1.1.1. [REDACTED]

7.1.1.2. [REDACTED]

7.1.2. [REDACTED]

7.1.2.1. [REDACTED]

7.2. Pre-Existing Intellectual Property and Acquired Intellectual Property:

[REDACTED]

[REDACTED]

[REDACTED]

7.2.1. [REDACTED]

7.2.2. [REDACTED]

[REDACTED]

8. [REDACTED]

8.1. [REDACTED]

8.2. [REDACTED]

9. TERM

This MOU is effective on the date that all parties have executed it by signing and dating it below (the “**Effective Date**”). The MOU remains effective until it is replaced, or amended, by written agreement of all parties to it.

10. AMENDMENT:

This MOU may be amended by the written agreement of all parties to it.

11. SURVIVAL CLAUSE:

The following clauses shall survive termination of the remainder of the MOU:
4, 5, 6, 7 and 8.

12. FURTHER ASSURANCE

At its own expense, each party shall and shall use all reasonable endeavors to procure that any necessary third party shall promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this MOU.

SIGNED BY THE **KPG BOARD OF DIRECTORS** ON THE DATES INDICATED BELOW

THE AUSTRALIAN POSTAL CORPORATION	
Signature of Authorized Representative	
Name of Authorized Representative	
Date of Signing	

CHINA POST GROUP	
Signature of Authorized Representative	
Name of Authorized Representative	
Date of Signing	

CORREOS y TELEGRAFOS SAE	
Signature of Authorized Representative	
Name of Authorized Representative	
Date of Signing	

HONGKONG POST	
Signature of Authorized Representative	
Name of Authorized Representative	
Date of Signing	

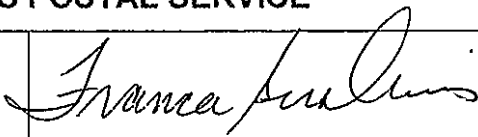
JAPAN POST CO., LTD,	
Signature of Authorized Representative	
Name of Authorized Representative	
Date of Signing	

KOREA POST	
Signature of Authorized Representative	
Name of Authorized Representative	
Date of Signing	

GROUPE LA POSTE	
Signature of Authorized Representative	
Name of Authorized Representative	
Date of Signing	

ROYAL MAIL GROUP LIMITED	
Signature of Authorized Representative	
Name of Authorized Representative	
Date of Signing	

THAILAND POST CO., LTD.	
Signature of Authorized Representative	
Name of Authorized Representative	
Date of Signing	

UNITED STATES POSTAL SERVICE	
Signature of Authorized Representative	
Name of Authorized Representative	Franca S. Davis
Date of Signing	12/6/2016